Supreme Court of the United States

October Term, 1949.

No. 391.

MARION J. SLOCUM, as General Chairman, Lackawanna Division No. 30 of The Order of Railroad Telegraphers,

Petitioner,

vs.

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

BRIEF OF RESPONDENT.

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THE REPORTER COMPANY, INC., Walton, N. Y.—1950

Index.

AUTHORITIES CITED.

Cases.

REPORTED DECISIONS HEREIN.

STATUTES.

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RESPONDENT'S BRIEF.

Opinions Below.

(1) Opinion of PERSONIUS, J., denying the application for removal, 183 Misc. 454, 50 N. Y. Supp. (2d) 313.

(2) Opinion of KNIGHT, D. J., remanding action and denying motion to dismiss complaint, 56 Fed. Supp. 634.

(3) Opinion of NEWMAN, J., denying motion to dismiss complaint (not reported), printed at R. 22-24.

(4) Opinion of Appellate Division of the Supreme Court per HILL, P. J., unanimously affirming order denying motion to dismiss complaint, 269 App. Div. 467, 57 N. Y. Supp. (2d) 65, printed at R. 25-26.

(5) Opinion of NEWMAN, J., on granting judgment (not reported), printed at R. 275-278.

(6) Opinion of Appellate Division of the Supreme Court, *Per Curiam*, on unanimous affirmance of judgment, 274 App. Div. 950, 83 N. Y. Supp. (2d) 513, printed at R. 282-283.

(7) Opinion of Court of Appeals per CONWAY, J., and dissenting opinion, DESMOND, J., on affirmance of judgment, 299 N. Y. 496, 87 N. E. (2d) 532, printed at R. 356-369.

Jurisdiction.

The petitioner invokes the jurisdiction of this Court under Section 1257 (3) of Title 28 of the United States Code, under claim that the National Railroad Adjustment Board had exclusive jurisdiction under the Railway Labor Act to determine the controversy.

Statement of the Case.

This action was instituted in the Supreme Court of the State of New York for the construction of certain contracts between respondent and petitioner and between respondent and Louis J. Carlo as General Chairman of System Board of Adjustment, Delaware, Lackawanna and Western Railroad, of Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, hereinafter referred to as the "Clerks." No appeal was taken by the clerks from the judgment of the Trial Court and they are not a party to this review.

The history of the litigation is as follows: The action was commenced by the service of the summons and complaint on the petitioner on March 3, 1944, and on the general chairman of the clerks on March 10, 1944. On March 23, 1944, petitioner filed a petition and bond for removal of the action to the United States District Court for the Western District of New York and applied to the State Supreme Court for an order removing the action to said United States District Court. The application was denied. Thereafter the bond was approved by the Hon. John Knight, United States District Judge for

said District and the record filed in the District Court. The petitioner thereupon moved in said Court to dismiss the action for lack of jurisdiction and the respondent made a cross motion to remand the case to the State Court. The motion to dismiss was denied and the motion to remand granted. The defendants then answered the complaint and petitioner moved in the State Supreme Court to dismiss the complaint. The motion was denied. The petitioner appealed to the Appellate Division of the Supreme Court where the order denying dismissal was unanimously affirmed. The action was tried on August 6, 1945, and decided on January 9, 1946. The petitioner appealed from the judgment to the Appellate Division of the Supreme Court which unanimously affirmed the judgment. The petitioner appealed by permission of the Court of Appeals to that Court and the Court of Appeals affirmed the judgment.

This controversy arose over the positions held and work performed by three crew callers in the yard office of the respondent at Elmira, New York. Prior to May 1, 1938, the railroad employed at Elmira three clerk-operators in its passenger station, three towermen at the Lehigh Valley tower in its yard and three operators at the yard office, all of which positions were listed in the Telegraphers' union agreement, and three crew clerks or crew callers in the yard office who were within the Clerks' union agreement. Each position was a three-trick job and the three men represented the three tricks of duty. On May 1, 1938, there was a consolidation at Elmira which resulted in the jobs of the three operators in the yard office being abolished (R. 49-50). This change was made in the interest of economy, as there was scarcely enough work for nine men in the twelve positions (R. 50). The telegraph instruments were taken out of the yard office (R. 50). The telegraphic duties of the operators were distributed to the others covered by the Telegraphers'

agreement, the sending of telegrams being transferred to the clerk-operators at the passenger station and the issuance of all clearance cards and train orders which directly governed the movement of trains being transferred to the towermen who were reclassified as operator-towermen at an increase in pay. The crew clerks were left in the yard office (R. 50) and the clerical work which the operators had been doing was left in the yard office to be performed by the crew clerks (R. 50-51). It always has been the custom for telegraphers to perform other duties of a clerical nature to fill out their day and it was this portion of the clerical work which was assigned to the crew clerks when the operators' positions were abolished (R. 41, 73-74, 76-77, 81).

The matter of reduction or increase of forces was for the railroad management to decide (R. 70, 73-74, 94, 194) but the railroad did not act arbitrarily. The officials conferred with General Chairman Voss of the Telegraphers' union before the change was authorized (R. 50-51). He concurred in the change, providing the men in the tower were given the operators' rate of 74 cents rather than the towermen's rate of 71 cents which they had been receiving (R. 51). The operator-towermen were given the 74-cent rate (R. 51). This was confirmed by letter, Exhibit 4 (R. 52, 250).

The union agreement with the Telegraphers' union then in force is in evidence as Exhibit 1. Such agreement was effective from January 1, 1929 to May 1, 1940 (R. 40). That agreement listed the Telegraphers' positions at Elmira as clerk-operators for the three tricks, and in Elmira yard as operators for the three tricks (which positions were abolished) and as towermen for three tricks (which positions were abolished and for which positions of operator-towermen at the increased rate were substituted) (R. 40, 298).

General Chairman Voss never protested the change made, and he remained in office until June, 1939 (R. 52). Later, the change was protested and on November 9, 1939, General Superintendent Moffatt met General Chairman Chadwick and his Committee for discussion of 18 cases, one of which, No. 7, involved the Elmira yard office. A settlement of the 18 cases was discussed and followed by the letter, Exhibit 8. In respect to case No. 7, the Elmira yard operators, the answer of the company was:

> "Elmira Yard Operators. Present arrangement to be continued until such time as grade crossing project is completed when present tower operators will be transferred to the yard office" (R. 57, 255).

By this same letter the company indicated its willingness to add 14 positions not previously within the Telegraphers' agreement to the Telegraphers' schedule (R. 256). The settlement of the 18 cases in dispute was accepted by the General Committee by letter, Exhibit 9 (R. 57, 257), on December 4, 1939.

The grade crossing elimination referred to has not been completed. It has been ordered by the Public Service Commission and is a post-war project (R. 66-67).

On January 12, 1940, General Chairman Chadwick gave notice of opening up the existing union agreement and a new union agreement was negotiated between the railroad and telegraphers, Exhibit 10 (R. 57-58, 329-350). The union asked that the three positions in question be added to the agreement and the company refused (R. 62-63). This agreement, effective May 1, 1940, as finally agreed on, listed as the telegraphers' positions in Elmira only the three operator-clerks in the passenger station and the three operator-towermen in the yard (R. 346).

The agreement, Exhibit 10, contains no rule defining the work or duties of the positions. The General Chair-

man of the Telegraphers' union so testified and their counsel stated there was nothing in the agreement defining the work of the positions listed (R. 142, 186).

It was the position of the railroad that the positions covered by the Telegraphers' agreement were the positions listed therein, that the negotiations were on that basis and that no position was covered by the agreement until negotiated into the listing (R. 61). The railroad recognizes that the handling of train orders, clearance cards and messages by telegraph is work which belongs to the Telegraphers and all positions whose occupants perform such work are listed in the agreement (R. 50).

The Telegraphers contended that any conversation, over the telephone, important enough to be written down and made a record of should be regarded as telegraphers' work, regardless of whether it governed train movement (R. 170-171, 181). They claimed all such work but admitted they had never been able to have the railroad subscribe to such contention (R. 142). The management never having agreed to that contention, it was never embodied in any agreement with the Telegraphers. Nevertheless, the Telegraphers attempted to stand on it and make it the basis of their claim. They claimed that three men on the Telegraphers' extra list who did no work themselves should be paid under the agreement for work performed by the crew callers retroactively to May 1, 1938 (R. 184, 262, 271). Those three men were unidentified and neither General Chairman Chadwick nor General Chairman Slocum had any written claim from any individual employee or any authorization to present a claim on behalf of any individual employee to the railroad (R. 147, 183). There was no proof the crew callers ever handled train orders, clearance cards or telegraph messages.

The Clerks' union claimed the positions and work under their agreements (R. 100, 93, 68) and the Telegraphers under their agreements and the railroad brought this action to have the existing agreements construed and the rights and liabilities of all parties thereunder determined by declaratory judgment.

The Court found and declared that the positions in question and the work assigned to the crew callers came within the Clerks' agreement and not within the Telegraphers' agreement (R. 236, 242, 247) and found also that the Telegraphers were estopped by their acts and conduct at the time of and subsequent to the change as well as by their agreement from claiming said positions or work (R. 239, 244).

In the Appellate Division of the Supreme Court, which Court had power to review the facts and the weight of evidence, the petitioner did not raise the question that the findings of the Trial Court were not correct or not amply supported by the evidence.

In the Court of Appeals the only contention raised by the petitioner which could be used to invoke the jurisdiction of this Court under Section 1257 (3) of Title 28 of the United States Code was the contention that the National Railroad Adjustment Board had *exclusive* jurisdiction to determine the controversy (299 N. Y. 499) (R. 356-357).

Summary of Argument.

I. The Supreme Court of the State of New York had jurisdiction to interpret the contracts. Procedure before the National Railroad Adjustment Board was not an exclusive remedy nor an essential preliminary to the bringing of the action. The decision in *Moore v. Illinois Cent.*

R. Co., 312 U. S. 630, has determined the question adversely to the petitioner's contentions.

II. There is no reason of public policy requiring the Court to read into the Railway Labor Act by implication a withdrawal of the right of the Courts to interpret the contracts in the first instance. The Railway Labor Act does not require such an interpretation to render it effective. The function of the Interstate Commerce Commission in determining the reasonableness of established freight rates is not comparable to the function of the Railroad Adjustment Board in passing on disputes involving the interpretation of union agreements.

ARGUMENT.

I.

The Supreme Court of the State of New York, a court of general jurisdiction, had jurisdiction to interpret the agreements and determine the controversy.

The very question which petitioner raises was decided by this Court on March 31, 1941. In *Moore v. Illinois Cent. R. Co.*, 312 U. S. 630, it was squarely held that the procedure before the National Railroad Adjustment Board was not an exclusive remedy and that a party was not compelled to present its claim to such Board, but had the choice of resorting to a court of competent jurisdiction in the first instance. It was held therein that the party need not seek an adjustment of the controversy as provided in the Railway Labor Act as a prerequisite to the bringing of an action in the State Court. In an opinion by Mr. Justice Black in that case the Court said, 312 U. S. 630, at pages 634-636:

"But we find nothing in that Act which purports to take away from the courts the jurisdiction to determine a controversy over a wrongful discharge or to make an administrative finding a prerequisite to filing a suit in court. * * * It is to be noted that the section pointed out, §153 (i), as amended in 1934 provides no more than that disputes 'may be referred * * * to the * * * Adjustment Board * * *.' It is significant that the comparable section of the 1926 Railway Labor Act (44 Stat. 577, 578), had, before the 1934 amendment, provided that upon failure of the parties to reach an adjustment a 'dispute shall be referred to the designated adjustment board by the parties, or by either party * * *.' Section 3(e). This difference in language, substituting 'may' for 'shall,' was not, we think, an indication of a change in policy, but was instead a clarification of the law's original purpose. For neither the original 1926 Act, nor the Act as amended in 1934, indicates that the machinery provided for settling disputes was based on a philosophy of legal compulsion. On the contrary, the legislative history of the Railway Labor Act shows a consistent purpose on the part of Congress to establish and maintain a system for peaceful adjustment and mediation voluntary in its nature. The District Court and the Circuit Court of Appeals properly decided that petitioner was not required by the Railway Labor Act to seek adjustment of his controversy with the railroad as a prerequisite to suit for wrongful discharge."

The decision in the *Moore* case has never been overruled or modified and has been followed in many state and federal cases.

In the case of *Washington Terminal Co. v. Boswell*, 124 Fed. (2d) 235, affirmed 319 U. S. 732, Associate Justice Rutledge writing for the United States Court of Appeals for the District of Columbia stated at page 238:

> "The decision" (*Moore v. Illinois Cent. R. Co.*, 312 U. S. 630) "establishes that in such circumstances the Act has neither excluded the general jurisdiction of the Courts nor made exhaustion of the administrative remedy prerequisite to its exercise, for decision of controversies which might be determined by the statutory method. At the threshhold of controversy accordingly, the disputants have alternate routes which they may follow. One is entirely judicial without regard to the Railway Labor Act. The other is administrative and judicial, according to its terms."

and at page 244:

> "The *Moore* decision holds that Congress has not compelled disputants to go before the Board."

and again at page 249:

> "The foregoing considerations are reinforced by the fact that the carrier under the decision in *Moore v. Illinois Cent. R. R., supra*, can bring its suit on the contract, independently of the statute, prior to the time when the dispute is submitted to the Board. Until then, at least, it has its election to pursue the exclusively judicial remedy or to follow the administrative and judicial one provided by the Railway Labor Act."

It will be noted that in the *Washington Terminal Co. v. Boswell* case the action was for a declaratory judgment by the employer and it was not held that the form of action was not proper or that such action could not be brought by any party to the dispute. The ground for dismissal was that the dispute had actually been submitted to and decided by the Railroad Adjustment Board. Even as to dismissal on that ground, the affirmance was by an evenly divided Court.

In *Elgin, J. & E. Ry. Co. v. Burley, et al.*, 325 U. S. 711, Mr. Justice Rutledge delivered the opinion of the

Court and discussed the *Moore* case at page 721. The discussion is amplified by Footnote 11 to said opinion where it was stated:

> "The problem presented was whether the Adjustment Board procedure either was exclusive or was an essential preliminary to judicial proceedings within the doctrine of primary jurisdiction."

The wording of the statute in respect to the referring of disputes to the National Railroad Adjustment Board is "*may be referred*" which clearly is not mandatory. The applicable section of the Railway Labor Act (U. S. Code, Tit. 45, §153 subd. First par. [i]) reads:

> "(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

The respondent has sought no rights under the Railway Labor Act but brought this action only for a construction or interpretation of the contracts between the parties. Like the plaintiff in the *Moore* case, it rests its case on the existing contracts.

Before the Railway Labor Act of 1934 was enacted, the State Courts took jurisdiction of controversies involving the construction of working agreements such as those involved in this case (*Piercy v. Louisville & Nashville Ry. Co.*, 198 Ky. 477, 248 S. W. 1042; *McGregor v. Louisville*

& Nashville Ry. Co., 244 Ky. 635, 51 S. W. (2d) 953; *Panhandle and Santa Fe Ry. Co. v. Wilson* (Texas), 55 S. W. (2d) 216; *Long v. Baltimore & Ohio R. R. Co.*, 155 Md. 265, 141 Atl. 504; *Gregg v. Starks*, 189 Ky. 32, 224 S. W. 459; *Rentschler v. Missouri Pacific Ry. Co.*, 126 Nebraska 493, 253 N. W. 694; *McCoy v. St. Joseph Belt Ry. Co.*, 229 Mo. App. 506, 77 S. W. (2d) 175; *George T. Ross Lodge v. Brotherhood of Railroad Trainmen*, 191 Minn. 373, 254 N. W. 590; *Gary v. Central of Georgia Ry. Co.*, 37 Ga. App. 744, 141 S. E. 819). There has been no ousting of the jurisdiction of the State Courts by the enactment of the Railway Labor Act (*Moore v. Illinois Central* [*supra*]). The following are some of the cases adjudicated in the State Courts since enactment of the Act: *Brotherhood of Locomotive Engineers v. Mills*, 43 Ariz. 379, 31 Pac. (2d) 971; *Florestano v. Northern Pacific Ry. Co.*, 198 Minn. 203, 269 N. W. 407; *Moore v. Illinois Central*, 180 Miss. 276, 176 So. 593; *Swilley v. G. H. & S. A. Ry. Co.* (Texas), 96 S. W. (2d) 105; *Franklin v. Pennsylvania-Reading S. S. Lines*, 122 N. J. Eq. 205, 193 Atl. 712; *McCrory v. Kurn* (Mo.), 101 S. W. (2d) 114; *Lyons v. St. Joseph Belt Ry. Co.* (Mo.), 84 S. W. (2d) 933; *Evans v. Louisville & N. R. Co.*, 191 Ga. 395, 12 S. E. (2d) 611; *Wooldridge v. Denver & R. G. W. R. Co.*, 118 Col. 25, 191 Pac. (2d) 882; *Edelstein v. Duluth, M. & I. R. Ry. Co.* 225 Minn. 508, 31 N. W. (2d) 465; *Coyle v. Erie R. Co.*, 142 N. J. Eq. 306, 59 Atl. (2d) 817; *Southern Ry. Co. v. Order of Ry. Conductors of America*, 210 S. C. 121, 41 S. E. (2d) 774, 54 S. E. (2d) 816. (Cert. granted Dec. 12, 1949.)

Federal Courts within the State of New York have recognized the jurisdiction of the State Courts as proper tribunals to decide questions arising out of working agreements such as here presented (*Swartz v. So. Buffalo Ry. Co.*, 44 Fed. Supp. 447; *McDermott v. New York Central R. Co.*, 32 Fed. Supp. 873).

The construction of the working agreements is frequently by declaratory judgment (*Piercy v. Louisville & Nashville Ry. Co.*, 198 Ky. 477, 248 S. W. 1042; *Burton v. Oregon-Washington R. & Nav. Co.*, 148 Ore. 648, 38 Pac. (2d) 72; *Louisville & Nashville R. Co. v. Bryant*, 263 Ky. 578, 92 S. W. (2d) 749; *Wooldridge v. Denver & R. G. W. R. Co.* (Col.), 191 Pac. (2d) 882; *Southern Ry. Co. v. Order of Ry. Conductors of America*, 210 S. C. 121, 41 S. E. (2d) 774, 54 S. E. (2d) 816).

The petitioner advanced in the state courts the claim that the controversy here is not justiciable, relying on the decisions of *General Committee of Adjustment v. M. K. T. R. R. Co.*, 320 U. S. 323, and *General Committee of Adjustment v. Southern Pacific R. Co.*, 320 U. S. 338. Those cases are cited here by the petitioner. They are purely representation cases and have no application to this case which involves the question of interpretation of existing contracts. The *Southern Pacific* and *M. K. T.* cases presented the question of which union was the proper bargaining representative for the engineers in handling controversies with the carrier's representatives. In the *Southern Pacific* case, the Engineer's union claimed to be the exclusive representative of all engineers whether belonging to their union or the Firemen's union in handling their individual grievances. It sought to have the collective bargaining agreement between the Carrier and the Firemen, which provided that an engineer had the right to be represented by the committee of his own organization in the handling of his grievances, declared invalid under the Railway Labor Act. In the *M. K. T.* case, the Engineer's union sought a declaratory judgment that it be declared the sole representative of the locomotive engineers with exclusive right to bargain for them and that the mediation agreement which had been made between the Firemen's union and the Carrier be declared invalid as in violation of the Railway Labor Act. The

Engineer's union claimed that the Carriers had no right under the Act to negotiate with the Firemen's union on the subject of emergency engineers. This Court in each case held that such representation problems did not present justiciable controversies but should be resolved by the mediation procedure provided by the Act.

There is no representation dispute in the case at bar. It is pleaded in the complaint and admitted in the answers that the petitioner Union is the sole bargaining agent for the telegraphers (R. 5, 19), and that the other defendant Union is the sole bargaining agent for the clerks (R. 7, 16). The only issue involved in this case is which contract covers the positions held by the crew clerks. While the Courts will not determine who is the proper bargaining agent, the Courts will interpret the contracts duly and regularly entered into between the carrier and such sole bargaining agents.

The distinction between disputes involving the formation of agreements and disputes under existing agreements was clearly pointed out in *Elgin, Joliet & Eastern Ry. Co. v. Burley*, 325 U. S. 711. The Court of Appeals in this case, quoting from the *Burley* case, said (299 N. Y. 496, 501-502) (R. 359):

> "Beyond the initial stage of negotiations and conference the act provides for different methods of settlement for the two classes of disputes. As pointed out in *Elgin, Joliet & Eastern Ry. Co. v. Burley* (325 U. S. 711, 723), the first type 'relates to disputes over the formation of collective agreements or efforts to secure them. They arise where there is no such agreement or where it is sought to change the terms of one, and therefore the issue is not whether an existing agreement controls the controversy. They look to the acquisition of rights for the future, not to assertion of rights claimed to have vested in the past.' Concerning that class of disputes the act provides first for

mediation before the National Mediation Board, if that fails, then voluntary arbitration; and if that fails, conciliation by presidential intervention (U. S. Code, tit. 45, §§155, 157, 160; see *Burley* case, *supra*, p. 725).

"The second class of disputes 'contemplates the existence of a collective agreement already concluded or, at any rate, a situation in which no effort is made to bring about a formal change in terms or to create a new one' (*Burley* case, *supra*, p. 723). All parties and the Courts below agree that the instant case is within the second classification, and that the course prescribed by the act for the settlement of this type of dispute is submission to the Railroad Adjustment Board. • • • It will be noted that the wording of the statute with respect to the submission of disputes to the Board is 'may be referred' which is clearly not mandatory."

The petitioner relies also on the case of *Order of Railway Conductors v. Pitney*, 326 U. S. 561. In that case a dispute arose as to whether the yard conductors represented by the Trainmen's Union or the road conductors represented by the Conductor's Union should operate certain trains within the yard. The District Court had to act in a dual capacity as the railroad was in bankruptcy in that court. It had to instruct its trustees how to proceed and in so doing was obliged to interpret the union agreements. The conductors claimed that the work in question could not be taken from them and given to the trainmen without negotiating the work out of their contract and asked the Court to enjoin such transfer of work unless such contract was changed by the method prescribed by the Railway Labor Act. They sought an injunction restraining the trustees from transferring the work until negotiated out of their contract by the process of mediation. The District Court had to determine whether there was any clear violation of a right given by Congress and in determining such question would have

to interpret the conductors' agreement to determine whether it gave the conductors the work. If it did not, no negotiation of a new agreement was necessary. This Court held that the District Court properly proceeded to interpret the agreements insofar as instructing its trustees was concerned but it should have refrained in its discretion from interpreting the contracts as a basis for injunctive relief to give the parties the opportunity to have the contracts interpreted by the National Railroad Adjustment Board.

The fact that the Court had to interpret the contracts in two capacities, in the first of which it was identified with one of the parties to the dispute, made it proper and desirable that it should pass the question to another tribunal for determination as between the parties.

The *Pitney* case does not hold that the matter was not justiciable as it was suggested that it be given to the Adjustment Board which equally with the Courts under the *Moore* decision may interpret the contracts. It does not deny to the Courts the right to interpret the contracts but states that under the circumstances of that case as a matter of discretion the court of equity should stay its hand. Furthermore, the case was essentially one in reference to alteration of an existing contract, a case on the mediation rather than the adjustment side of the statute, the suit being one for an injunction to stay what was claimed to be a clear violation of a right given by the statute, i. e., that the existing agreement be changed only in the manner prescribed by the Act.

There is nothing in the *Pitney* case in conflict with the decision in the case at bar where the Court merely has exercised its jurisdiction to interpret existing contracts. No question of negotiating contracts is involved and no question of acting in a dual capacity.

The cases of *Missouri, Kansas, Texas R. Co. v. Randolph*, 164 Fed. (2d) 4, and *The Order of Railroad Telegraphers v. New Orleans, Texas & Mexico Ry. Co.*, 156 F. (2d) 1, cited by the petitioner are readily distinguishable from the case at bar. In each of those cases the complaining union was asking the Federal Court to interfere by injunction with the action of another union and the carrier taken or threatened to be taken pursuant to the Railway Labor Act but claimed to violate rights of the complaining union. In each case, the Court found that a proper showing had not been made to require the Federal Court to intervene by injunction and the parties were left to pursue their remedies under the Railway Labor Act. They are examples of the policy of the Federal Courts not to interfere by injunction with the normal processes of acquiring rights under agreements negotiated under the provisions of the Railway Labor Act.

The Court of Appeals found that the *Moore* case was controlling on the facts of the case at bar and followed it in affirming the judgment.

II.

No considerations of public policy require that the Courts be precluded from interpreting existing contracts.

The petitioner argues that the *Moore* case should be overruled or limited to its precise facts and that jurisdiction should be denied to the Courts to interpret existing contracts. It is asserted that public policy requires that a party to a dispute under an existing contract should be required to first go to the Railroad Adjustment Board for an administrative finding. But in pro-

ceeding before the Adjustment Board, the party would have elected to follow that remedy and the Board would thus obtain exclusive jurisdiction. The argument is that the statute is similar to the Interstate Commerce Act and that the doctrine first announced in *Texas & Pac. Ry. v. Abilene Cotton Oil Co.*, 204 U. S. 426, should be applied. In that case it was held that a shipper seeking reparation because of the claimed unreasonableness of the established rate must, under the Interstate Commerce Act, primarily seek redress through the Interstate Commerce Commission. The statute was designed to establish reasonable and uniform rates to all shippers and the carrier was not lawfully permitted to deviate from the published tariff rate. The statutory purpose to establish uniformity and nondiscrimination would be defeated if Courts and juries were permitted to determine what were reasonable charges without reference to the established and uniform rate. The Court adopted the rule of primary resort to the Interstate Commerce Commission only after it had determined that the pre-existing right of resort to the Courts was so repugnant to the statute that it would render its provisions nugatory. The Court said at pages 436 and 437:

> "In testing the correctness of this proposition we concede that we must be guided by the principle that repeals by implication are not favored, and indeed that a statute will not be construed as taking away a common-law right existing at the date of its enactment, unless that result is imperatively required; that is to say, unless it be found that the pre-existing right is so repugnant to the statute that the survival of such right would in effect deprive the subsequent statute of its efficacy; in other words, render its provisions nugatory."

In cases arising under the Interstate Commerce Act where overcharges or undercharges are involved because

the charges made are contrary to the published tariff rate, the Courts have jurisdiction to entertain the actions. This Court took away from primary determination by the Courts only that class of cases which would interfere with the duty of the Interstate Commerce Commission to maintain such uniform and reasonable rates.

The Interstate Commerce Commission is a regulatory body and quasi-judicial tribunal charged by Congress with the maintenance of a statutory standard.

The National Railroad Adjustment Board is a fundamentally different body. It is not charged with the maintenance of statutory standards and is not a regulatory body. Its members are chosen for each division in equal number from and by the carriers and the national labor organizations. They are representatives of said carriers or organizations and compensated by them. In case of deadlock a neutral person is chosen to sit with the division as a member and make an award. This Referee, who may or may not be familiar with railroading, has the deciding vote. Regional boards may be set up under the Act by agreement of the carriers and representatives of the employees which can adjust and decide disputes of the character referable to the National Railroad Adjustment Board.

The Railway Labor Act was not intended by Congress to establish a policy of providing uniformity in collective bargaining agreements. The policy was to avoid interruption to interstate commerce by providing for free collective bargaining and prompt and orderly settlement of disputes. The free exercise of the right of collective bargaining between the many carriers and their various classes of employees necessarily results in a wide disparity between the contracts. In interpreting the contracts each must stand on its own terms and provisions. The terms of the agreements are of interest only to the parties, the

public being interested only in the fact that the flow of interstate commerce is not interrupted or seriously hampered by labor disputes. In *Terminal Railroad Association of St. Louis v. Brotherhood of Railroad Trainmen*, 318 U. S. 1, this Court in an opinion by Mr. Justice Jackson said:

> "The Railway Labor Act, like the National Labor Relations Act, does not undertake governmental regulations of wages, hours, or working conditions. Instead it seeks to provide a means by which agreement may be reached with respect to them. The national interest expressed by those Acts is not primarily in the working conditions as such. So far as the Act itself is concerned these conditions may be as bad as the employees will tolerate or be made as good as they can bargain for. The Act does not fix and does not authorize anyone to fix generally applicable standards for working conditions. The federal interest that is fostered is to see that disagreement about conditions does not reach the point of interfering with interstate commerce. The Mediation Board and Adjustment Board act to compose differences that threaten continuity of work, not to remove conditions that threaten the health or safety of workers."

It was held in that case that the Railway Labor Act does not preclude state action in regulation of working conditions. Likewise there is nothing in the Act to preclude state judicial action to the end that controversies arising out of the interpretation of contracts may be settled. In creating the Adjustment Board the plain intent of Congress was to provide an additional tribunal which might be used at the option of the parties. As heretofore shown the state courts were exercising jurisdiction in contractual disputes at the time of the enactment of the act. To apply the test of the *Abilene* case, the pre-existing right of the Courts to act is not so repugnant to the statute as to render its provisions nugatory. The Courts

have been exercising that jurisdiction for the fifteen years since the enactment of the act to the benefit of the litigants, the industry and the public. No railroad employee having a claim against his employer on contract should be obliged to go to the board to have his contractual rights and obligations determined when local courts, federal or state, provide a more convenient forum.

There is nothing in the legislative history of the Railway Labor Act to indicate that the right to determine disputes arising on contract was to be withdrawn from the jurisdiction of the courts. The report of the House Committee on Interstate and Foreign Commerce on the bill (House Report No. 1944, 73rd Congress, 2nd Session, p. 2) stated that "the bill does not introduce any new principles into the existing Railway Labor Act."

Any delay in progressing this controversy through the state court is largely attributable to the petitioner's efforts to remove a non-removable case and to have the state court hold that it lacked or should decline on discretionary grounds to exercise jurisdiction.

CONCLUSION.

It is respectfully submitted that the Courts below correctly held that their jurisdiction had not been withdrawn in an action involving the construction or interpretation of existing contracts by the enactment of the Railway Labor Act and correctly relied on the decision of *Moore v. Illinois Cent. R. Co.*, 312 U. S. 630 as controlling on that question and that the judgment should be affirmed.

Respectfully submitted,

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